

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Ernest Yarborough,)	C/A NO. 0:06-2329-CMC-BM
)	
Petitioner,)	
)	ORDER
v.)	
)	
Henry McMaster, Attorney General for the)	
State of South Carolina,)	
)	
Respondent.)	
<hr/>		

This order is entered to clarify the reasons for the court's denial of Petitioner's motion to stay filed with his petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. *See In re Grand Jury Proceedings Under Seal v. United States*, 947 F.2d 1188 (1991).

"In the interest of giving state courts the first opportunity to consider alleged constitutional errors occurring in a defendant's state trial and sentencing, a § 2254 petitioner is required to 'exhaust' all state court remedies before a federal district court can entertain his claims." *Matthews v. Evatt*, 105 F.3d 907, 910 (4th Cir. 1997) (*citing* 28 U.S.C. § 2254(b) & (c)). The Fourth Circuit has held that South Carolina's Uniform Post-Conviction Procedure Act, which is currently codified at South Carolina Code Annotated § 17-27-10 *et seq.*, is a viable state-court remedy. *See Miller v. Harvey*, 566 F.2d 879, 880-81 (4th Cir. 1977); *Patterson v. Leeke*, 556 F.2d 1168, 1170-73 & n.1 (4th Cir. 1977).

A review of the petition indicates that Petitioner has not pursued a post-conviction relief action. Because Petitioner has a viable state court remedy which has not been fully utilized, this court will not maintain this matter on its docket while Petitioner exhausts his state remedies.

Therefore, a motion to stay is inappropriate at this juncture and is, therefore, **denied**. The Clerk is directed to forthwith transmit this order to the Fourth Circuit Court of Appeals.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON McGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
August 23, 2006

C:\temp\notesB0AA3C\06-2329 Yarborough v. McMaster e denying motion for stay.wpd